IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1195 OF 2004

Riyaz Ahmed Mustafa Walsangkar, .. Petitioner
Vs
1. The Deputy Director of Education
Pune Division, Pune and ors. .. Respondents

Mr S.G.Kudle, for the petitioner.
Mr C.R.Sonawane, AGP for respondent nos 1 and 3.
Mr I.M.Khairdi, for respondent no.4.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 27, 2005.

ORAL JUDGMENT : (PER D.B.BHOSALE, J.)

1. Rule. Returnable forthwith. Respondents waive service. By consent, rule is heard finally.

2. Mr Kudle, learned counsel for the petitioner, at the outset, submitted that inter-alia the question involved in this writ petition was also involved in Writ Petition No.1203 of 2004 and this petition can also be disposed of in terms of the order dated 25th June, 2004 passed by the Division Bench (A.P.Shah, Acting C.J. & S.U.Kamdar, J.) in that Writ Petition (No.1203 of 2004). Mr Sonawane, learned AGP, after verifying the statement made by Mr Kudle, on instructions from his client who was present in the Court, submitted that this petition can also be

disposed of in terms of the order passed by this Court on 25.6.2004 in Writ Petition No.1203 of 2004.

3. We perused the writ petition as also the annexures and in particular Exhibit "D" to the petition. We also perused the order dated 25.6.2004 disposing of writ petition no.1203 of 2004. Paragraphs 2 to 10 of the said order read thus :

> "2. By the present petition, the petitioner is seeking a writ of certiorari for quashing and setting aside the order dated 8th April, 2003 and further directing the respondents to do the revision of the pay fixation of the petitioner as per the option exercised by him. However, he further seeks a direction that the date of pay fixation should be treated as 1st July, 2000 instead of 1st March 2000. The brief facts of the case of the petitioner are as under:
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> 3. The petitioner is working as a Teacher with Zilla Parishad, Solapur. as per the IV Pay Commission, the salary of the petitioner was fixed at the scale of Rs.8,500/-. The petitioner was given an option to get his pay fixed by submitting the option and selecting the date of pay fixation as per the revised pay scale. The last date which was selected was 1st July, 2000. The petitioner accordingly filled the option form on 3rd June, 2000 in which he selected the revised pay scale w.e.f. 1st July, 2000.As per the option, the pay scale should be revised at Rs.8,825/- against his old pay scale of Rs.8,750/-.
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> 4. However, while submitting the said option form, he was required to submit the Pay Fixation Proforma wherein in column 6 by mistake the petitioner has written the date as 1st March, 2000 in respect of the

Government approved revised pay scale. However, in Column 9 the date of increment in respect of the existing pay scale is mentioned as 1st July, 2000 and in Column 11 his date of pay fixation is also mentioned as 1st July 2000 and in column 13 the next date of increment is also mentioned as 1st July, 2001.

5. However, the Accounts Officer, Audit-Squad (Education) Zilla Parishad, Solapur raised an objection about exercising of the option as they were of the view that by mentioning the date as 1st March 2000 in accompanying pay fixation proforma, the date of option to be taken into consideration as 1st March 2000 and not as on 1st July 2000.

6. Accordingly, by order dated 8th April 2003, the Deputy Director of education, Pune Division, Pune, inter alia, communicated to the petitioner that pursuant to the decision taken by task Force Committee on 25th March, 2003 and also pursuant to the information given by Accounts Officer, Solapur, it has been decided not to do the revision of pay fixation of the petitioner herein. This order dated 8th April, 2003 is challenged in the present petition.

7. The respondents have filed an affidavit in reply and resisted the case of the petitioner by reiterating the same facts. It has been inter alia sought to be explained that as on 1st March, 2000 also there was a pay fixation and therefore by writing the word 1st March, 2000 the petitioner is not entitled for an option to be exercised as on the date on 1st July, 2000.

8. However, the respondents having not disputed Exhibits A,B and C to the petition which inter alia indicates that in fact the option is exercised as on 1st July, 2000 and not as on 1st March, 2000. The date 1st March 2000 mentioned in column 6 is plainly an error which can be made out even by mere glance at the said option form and proforma form attached thereto.

9. We have heard the parties and we are

> not inclined to accept the arguments of the learned counsel for the respondents that merely because the date of pay fixation is erroneously mentioned as 1st March, 2000, the petitioner is not entitled to an option that it has exercised as on the date of 1st July 2000.
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> 10. We find that the same is a mere error and on such mere error, the respondents are not entitled to deprive the benefit to the petitioner which the petitioner is otherwise entitled to in law. Accordingly, we set aside the order dated 8th April 2003 and direct the respondents to revise the pay of the petitioner as per the option exercised by him by taking the date as 1st July 2000 and release the arrears of salary to the petitioner within the period of 4 weeks from today. Accordingly, the petition succeeds and is made absolute as per the direction set out hereinabove. However, there shall be no order as to costs."

4. The facts of the present case and that of Writ Petition No. 1203 of 2004 are similar. The order impugned in both these writ petitions is common. The only difference between the case of the petitioner in Writ Petition No.1203 of 2004 and the present petitioner is the date of option from which the pay scale requires to be fixed. In case of the present petitioner the said date is 1.6.2000, whereas in Writ Petition No.1203 of 2004 it was 1.7.2000. Keeping that in view and considering the submissions of the learned counsel for the parties, we are satisfied, this petition can be disposed of in terms of the order dated 25.6.2004. At this stage, Mr

Sonawane, learned AGP, prayed for eight weeks time to revise the pay of the petitioner.

5. In the circumstances, this petition stands disposed of by the following order.

(i) The contention of the respondents that the petitioner is not entitled to an option that he had exrcised as on the date of 1.6.2000, merely because the date of pay fixation was erroneously mentioned as 1.3.2000, is rejected. The respondents are, therefore, not entitled to deprive the benefit to the petitioner which he is otherwise entitled to in law.

(ii) The order dated 8.4.2003 is set aside. The respondents are directed to revise the pay of the petitioner as per the option exercised by him by taking the date as 1.6.2000 and release the arrears of salary to the petitioner within a period of eight weeks from today.

(iii) Rule accordingly stands disposed of. No costs.

(D.B.Bhosale, J.) **(S.B.MHASE, J.)**

/rrt/db-05/wp1195-04

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.1195 OF 2004

Date of Judgment:

April 27, 2005

For approval and signature

THE HON'BLE MR.JUSTICE S.B.MHASE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?